Esquire Enterprises, Inc. *and* Rhode Island Laborers' District Council, Laborers' International Union of North America, AFL–CIO. Case 1–CA–29075

July 9, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon a charge filed by Rhode Island Laborers' District Council, Laborers' International Union of North America, AFL–CIO on January 31, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Esquire Enterprises, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served with copies of the charge and the complaint, the Respondent has failed to file an answer.

On June 8, 1992, the General Counsel filed a Motion for Summary Judgment. On June 12, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated May 13, 1992, the regional attorney notified the Respondent that unless an answer was received by the close of business on May 20, 1992, a Motion for Summary Judgment would be filed. To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Springfield, Massachusetts, and a facility located in Johnston, Rhode Island, has been engaged in providing street sweeping services to various cities and towns in Rhode Island, including the city of Providence. During the calendar year ending December 31, 1992, a representative period, the Respondent, in the course and conduct of its business operations, performed services valued in excess of $50,000 in States other than the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find, as alleged in the complaint, that Local Union 1322 of the Laborers' International Union of North America, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since about April 10, 1989, and at all relevant times, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit within the meaning of Section 9(b) of the Act, and has been recognized as such by the Respondent. The Respondent's recognition of the Union was embodied in a collective-bargaining agreement that was effective from April 10, 1989, to June 30, 1991, but which was extended by agreement of the parties to November 3, 1991. Since April 10, 1989, the Union, by virtue of Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the employees in the bargaining unit. The appropriate bargaining unit consists of:

> All employees employed by Respondent at its Johnston, Rhode Island facility who are assigned to perform services of municipal functions, including, but not limited to, street sweeping, catch basin cleanout and the like, but excluding all guards and supervisors as defined in the Act.

In September and October 1991, the Respondent, without the Union's consent, failed to continue in effect all the terms and conditions of its agreement with the Union by failing to pay employees sick leave pay pursuant to article XIV of the contract, and, in November 1991, failed to pay employees sick leave pay, holiday pay, and vacation pay, without giving notice to the Union or affording it an opportunity to bargain over its conduct. By engaging in such conduct, the Respondent has failed

and refused, and is failing and refusing, to bargain with the Union in violation within the meaning of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By failing to continue in effect all the terms of its agreement with the Union by not paying employees sick leave pay, holiday pay, and vacation pay, the Respondent has failed and refused to bargain collectively and in good faith with the Union and has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to pay employees the sick leave pay, pursuant to article XIV of its agreement with the Union, that was not paid in September, October, and November 1991, and to pay employees the holiday pay and vacation pay that was not paid in November 1991, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Esquire Enterprises, Inc., Springfield, Massachusetts, and Johnston, Rhode Island, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to continue in effect all the terms of its collective-bargaining agreement with Local Union 1322 of the Laborers' International Union of North America, AFL–CIO, which is the exclusive bargaining representative of its employees in an appropriate bargaining unit, by failing to pay unit employees their sick leave pay as required by article XIV of its agreement, and failing to pay unit employees their holiday pay and vacation pay. The appropriate bargaining unit consists of:

> All employees employed by Respondent at its Johnston, Rhode Island facility who are assigned to perform services of municipal functions, including, but not limited to, street sweeping, catch basin cleanout and the like, but excluding all guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay unit employees the sick leave pay that was not paid in September, October, and November 1991, and the holiday and vacation pay that was not paid in November 1991, with interest as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Post at its facility in Johnston, Rhode Island, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

---

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to continue in effect all the terms of our collective-bargaining agreement with Local Union 1322 of the Laborers' International Union of North America, AFL–CIO, which is the exclusive bargaining representative of our employees in an appropriate bargaining unit, by failing to pay employees sick leave pay, holiday pay, and vacation pay. The appropriate unit consists of:

All employees employed by Respondent at its Johnston, Rhode Island facility who are assigned to perform services of municipal functions, including, but not limited to, street sweeping, catch basin cleanout and the like, but excluding all guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in effect all the terms of our collective-bargaining agreement with the Union, and WE WILL make whole unit employees by paying them the sick leave pay that was not paid during September, October, and November 1991, and the holiday and vacation pay that was not paid in November 1991, with interest.

ESQUIRE ENTERPRISES, INC.